

§ 1620.18

sex, may be required to make out paychecks, or divide up cash and put the proper amounts into pay envelopes after drawing a payroll check. In such circumstances, although some of the employees' duties are occasionally dissimilar, the difference in responsibility involved would not appear to be of a kind that is recognized in wage administration as a significant factor in determining wage rates. Under such circumstances, this difference would seem insufficient to justify a wage rate differential between the man's and woman's job if the equal pay provisions otherwise apply.

§ 1620.18 Jobs performed under similar working conditions.

(a) *In general.* In order for the equal pay standard to apply, the jobs are required to be performed under similar working conditions. It should be noted that the EPA adopts the flexible standard of similarity as a basis for testing this requirement. In determining whether the requirement is met, a practical judgment is required in light of whether the differences in working conditions are the kind customarily taken into consideration in setting wage levels. The mere fact that jobs are in different departments of an establishment will not necessarily mean that the jobs are performed under dissimilar working conditions. This may or may not be the case. The term "similar working conditions" encompasses two subfactors: "surroundings" and "hazards." "Surroundings" measure the elements, such as toxic chemicals or fumes, regularly encountered by a worker, their intensity and their frequency. "Hazards" take into account the physical hazards regularly encountered, their frequency and the severity of injury they can cause. The phrase "working conditions" does not encompass shift differentials.

(b) *Determining similarity of working conditions.* Generally, employees performing jobs requiring equal skill, effort, and responsibility are likely to be performing them under similar working conditions. However, in situations where some employees performing work meeting these standards have working conditions substantially different from those required for the per-

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formance of other jobs, the equal pay principle would not apply. On the other hand, slight or inconsequential differences in working conditions which are not usually taken into consideration by employers or in collective bargaining in setting wage rates would not justify a differential in pay.

§ 1620.19 Equality of wages—application of the principle.

Equal wages must be paid in the same medium of exchange. In addition, an employer would be prohibited from paying higher hourly rates to all employees of one sex and then attempting to equalize the differential by periodically paying employees of the opposite sex a bonus. Comparison can be made for equal pay purposes between employees employed in equal jobs in the same establishment although they work in different departments.

§ 1620.20 Pay differentials claimed to be based on extra duties.

Additional duties may not be a defense to the payment of higher wages to one sex where the higher pay is not related to the extra duties. The Commission will scrutinize such a defense to determine whether it is bona fide. For example, an employer cannot successfully assert an extra duties defense where:

(a) Employees of the higher paid sex receive the higher pay without doing the extra work;

(b) Members of the lower paid sex also perform extra duties requiring equal skill, effort, and responsibility;

(c) The proffered extra duties do not in fact exist;

(d) The extra task consumes a minimal amount of time and is of peripheral importance; or

(e) Third persons (i.e., individuals who are not in the two groups of employees being compared) who do the extra task as their primary job are paid less than the members of the higher paid sex for whom there is an attempt to justify the pay differential.

§ 1620.21 Head of household.

Since a "head of household" or "head of family" status bears no relationship to the requirements of the job or to the individual's performance on the job,